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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/882,928	06/15/2001	Joachim Horsch	018483-0710	5729

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Foley & Lardner
Firststar Center
777 East Wisconsin Avenue
Milwaukee, WI 53202-5367

EXAMINER	
PETRAVICK, MEREDITH C	
ART UNIT	PAPER NUMBER
3671	

DATE MAILED: 03/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/882,928

Applicant(s)

HORSCH, JOACHIM

Examiner

Meredith C Petravick

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32,34-37 and 39 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 32 and 34-3.7 and 39 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 29-32, 34-37 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pitt et al. 3,093,946 in view of Wieneke et al. 3,606,742.

Pitt et al. discloses a combine including:

- a threshing rotor (15)
- an engine (11)
- a hydraulic pump (10) driven by the engine
- a hydraulic motor (14) driven by the pump and driving the rotor

The engine drives the hydraulic pump which drives the hydraulic motor which drives the rotor. The transmission maintains the set rotor speed (Column 4, lines 14-24). The rotor speed is set manually by the operator moving the lever (49) that controls the pump (Column 6, lines 19-22). The Pitt et al. fails to disclose providing an electronic control circuit for automatically setting the rotor speed instead of manually setting the speed with a lever.

Like Pitt et al., Wieneke et al. discloses a combine with a threshing rotor. Wieneke et al. teaches that it is desirable to provide a combine with an electronic control system that automatically adjusts the speed of the rotor in response to sensed conditions, including the speed

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of the threshing rotor (Column 2, lines 35-42). This allows the rotor speed to be adjusted to optimally thresh the crop that is inside the combine at that time.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the combine of Pitt et al. with an electronic control system for controlling and maintaining the threshing rotor speed instead of a manual lever as taught in Wieneke et al., in order to optimally threshing the crop by matching the rotor speed to the characteristics of the crop when it is in combine.

In regards to claim 30-31 and 36-37, the rotor in Pitt et al. is a threshing rotor.

In regards to claim 32, the hydraulic pump in Pitt et al. is electronically controlled and the displacement is variable.

Response to Arguments

3. Applicant's arguments filed 1/9/03 have been considered but are not persuasive.

In the amendment filed 1/9/03, applicant amended independent claims 1 and 35 to include the limitations of canceled claims 33 and 38. In addition, Applicant argues that the combination of Pitt et al. and Wieneke et al. fails to disclose the claimed invention because the electronic control circuit in Wieneke does not use the data from the speed sensor to adjust the output from the hydraulic pump to maintain the rotor at a **constant** selected speed.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a **constant** selected speed) are not recited in the rejected claims. Although the claims are interpreted in light

of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Claims 1 and 35 do not claim that the rotor is maintained at a constant speed. It merely required a selected speed. Claim 1 and 35 state, “where the electronic control circuit monitors the rotor speed and determines appropriate control signals to send to the variable displacement pump to maintain the selected rotor speed.” As applicant points out on page 5, line 20 of the amendment filed 1/9/03, “Wieneke et al. merely compares the sensed speed of threshing-cylinder 5 with a measured crop throughput to determine whether the speed of the threshing-cylinder 5 itself should be increased or decreased.” This meets the limitation as claimed.

Therefore, the claims remain rejected.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

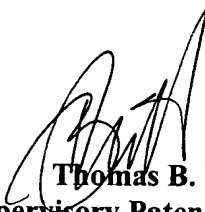
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5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Meredith Petravick whose telephone number is 703-305-0047.

The examiner can normally be reached on Monday-Thursday from 7:00 a.m. – 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached at 703-308-3870.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is 703-305-1113. The fax number for this Group is 703-305-3597.


Thomas B. Will
Supervisory Patent Examiner
Group Art Unit 3671

MCP
June 25, 2002